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Public Service Commission of Wisconsin  
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VIA ELECTRONIC FILING

Ms. Kara McFerren  
Consumer Affairs Analyst  
Division of Digital Access,  
Consumer and Environmental Affairs  
Public Service Commission of Wisconsin  
4822 Madison Yards Way  
Madison, WI 53705-9100

Re: Response-Data Request-PSC-McFerren-2  
Request of Repvblik Madison Apartments LLC, for a Waiver of Wis. Admin. Code  
§ PSC 113.0803(1) Regarding Individual Electric Meters  
Docket No. 3270-EI-103

Dear Ms. McFerran:

This letter is written on behalf of Madison Gas and Electric Company (MGE) in the above-referenced docket in response to Data Request-PSC-McFerren-2. Specifically, Data Request-PSC-McFerren-2 asks:

**PSCW-KM-1:** Does the utility oppose or support the applicant's request for a waiver of Wisconsin Administrative Code § PSC 113.0803?

**PSCW-KM-2:** Please describe any concerns or areas of support the utility may have regarding the applicant's request for the individual electric metering waiver.

As explained in more detail below, the Applicant has a right to request a waiver of Wisconsin Administrative Code § PSC 113.0803. However, the Applicant's request does not satisfy the standards for a waiver under Wis. Admin. Code § PSC 113.0803 or Wis. Admin. Code § PSC 113.01(2).

I. *Applicable Wisconsin Administrative Code provisions.*

In this docket, the Applicant seeks a waiver from the Public Service Commission of Wisconsin (Commission) under Wis. Admin. Code § PSC 113.0803 or Wis. Admin. Code § PSC 113.01(2). (See PSC REF # 477129.) The code provisions state, in part:

**PSC 113.0803      Individual electric meters required for non-transient multi-dwelling unit residential buildings, mobile home parks and for commercial establishments.**

- (1) Each dwelling in a multi-dwelling unit residential building and mobile home park constructed after March 1, 1980, shall have installed a separate electric meter for each such dwelling unit. Dwelling unit means a structure or that part of a structure which is used or intended to be used as a home, residence or a sleeping place by one or more persons maintaining a common household and shall exclude transient multi-dwelling buildings and mobile home parks: for example, hotels, motels, campgrounds, hospitals, community-based residential facilities, residential care apartment complexes or similar facilities, nursing homes, college dormitories, fraternities, and sororities.
- (2) Each tenant space in a commercial building constructed after March 1, 1980 shall have installed a separate electric meter.
- (3) Any existing building which undergoes alterations involving a change in type of occupancy or substantial remodeling shall have installed a separate electric meter for each separate tenant space.
- (4) For the purpose of carrying out the provisions of sub. (1), individual unit metering will not be required:
  - (a) In commercial buildings where the commercial unit space requirements are subject to alteration, as evidenced by temporary versus permanent type of wall construction separating the commercial unit spaces. Examples of temporary wall construction are partition walls which do not extend through the ceiling and walls which do not constitute a code-required fire separation.
  - (b) For electricity used in central heating, ventilating and air conditioning systems.

- (c) For electric back-up service to storage heating and cooling systems or when alternative renewable energy resources are utilized in connection with central heating ventilating and air conditioning systems.
- (5) For reasonable cause shown, the commission may grant waivers of this rule on a case-by-case basis. Applications for a waiver must be submitted to the commission in writing and set forth the facts or reasons applicant believes justify a waiver. In cases involving multi-dwelling unit residential buildings, the applicant must show that the electric equipment under tenant control is substantially more efficient than required by applicable codes and that the overall electric usage under tenant control is minimal. Example cases which would not qualify for waiver are buildings which are electrically heated or buildings which have individual unit electric water heaters.

**PSC 113.01 Application of rules.**

- (1) All public utilities, whether privately or municipally owned or operated, in respect to the supply of electric energy and provision of electric service in this state, shall comply with and conform to rules set forth in this order except insofar as exception may be made by order of the commission as hereinafter mentioned.
- (2) Nothing in this chapter of the Wisconsin Administrative Code shall preclude special and individual consideration being given to exceptional or unusual situations and upon due investigation of the facts and circumstances therein involved, the adoption of requirements as to individual utilities or services which shall be lesser, greater, other, or different than those provided in said rules.

....

II. *Wis. Admin. Code § PSC 113.0803 requires individual electric meters.*

The Applicant proposes to convert a former hotel located at 3917 Lien Road, Madison, Wisconsin into a multi-family dwelling unit. (See PSC REF #s 477129 and 480847.) The multi-family dwelling unit will contain 190 apartments and private amenities, including a “courtyard and greenspace with outdoor seating and grilling, a fitness center, lounge and coworking space.” (See PSC REF # 480847.)

Based on the information provided by the Applicant, the facility will be a multi-family dwelling unit; it will house individuals for residential purposes; and it is an existing building undergoing alterations involving a change in type of occupancy. (See PSC REF #s 477129 and 480847.) Specifically, the facility was formerly used as a transient multi-dwelling building (that is, a hotel) and will now be used as a non-transient multi-family dwelling unit (that is, an apartment). Thus, Wis. Admin. Code § PSC 113.0803(1) and (3) apply. The Applicant also provided information demonstrating that subsection (4) of Wis. Admin. Code § PSC 113.0803 does not apply to the individual apartment units.<sup>1</sup> (See PSC REF # 480847.)

Because Wis. Admin. Code § PSC 113.0803(1) and (3) apply and require individual electric meters for each dwelling unit in the Applicant's new apartment complex, MGE advised Applicant that compliance would be required unless the PSC determined that the facility met applicable waiver requirements. Based on the information provided by the Applicant there are significant questions as to whether the standards for a waiver under Wis. Admin. Code § PSC 113.0803 or Wis. Admin. Code § PSC 113.01(2) are in fact satisfied.

III. *The waiver standards under Wis. Admin. Code § PSC 113.0803 are not satisfied.*

Subsection (5) of Wis. Admin. Code § PSC 113.0803 contains the waiver standards and states:

For reasonable cause shown, the commission may grant waivers of this rule on a case-by-case basis. Applications for a waiver must be submitted to the commission in writing and set forth the facts or reasons applicant believes justify a waiver. In cases involving multi-dwelling unit residential buildings, the applicant must show that the electric equipment under tenant control is substantially more efficient than required by applicable codes and that the overall electric usage under tenant control is minimal. Example cases which would not qualify for waiver are buildings which are electrically heated or buildings which have individual unit electric water heaters.

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<sup>1</sup> Notwithstanding the Applicant's request that a waiver be issued "for electricity used in central heating, ventilating and air conditioning systems," the Applicant acknowledges that electrical use under the tenants' control will include electricity for "heating/cooling units" for the individual units. (See PSC REF # 480847 at 2-3, 5; PSC REF # 481857.)

This case involves a multi-dwelling unit residential building. Therefore, the Applicant must satisfy both criteria: (1) that the electric equipment under tenant control is substantially more efficient than required by applicable codes and (2) that the overall electric usage under tenant control is minimal. The information provided by the Applicant shows that neither is satisfied.

First, the Applicant has not provided any information to suggest that “the electric equipment under tenant control is substantially more efficient than required by applicable codes.” The Applicant has indicated that the packaged terminal heat pump (PTHP) units will be high-efficiency units; that the new lighting will be high-efficiency LED fixtures; and that the appliances will meet the latest energy standards nationally. (*See* PSC REF # 480847 at 5.) None of this information supports a finding that the electric equipment is more efficient than required by applicable codes. Rather, this information suggests that the equipment will be as efficient as required by applicable codes. Further, the Applicant acknowledges that certain existing systems may be reused, suggesting that certain equipment may not be as efficient as required by applicable codes. (*Id.*)

Second, the information provided by the Applicant does not support the second criteria either. Specifically, the Applicant must show that “overall electric usage under tenant control is minimal.” The opposite appears to be true. The Applicant acknowledged that “electrical use under tenants’ control include electricity for: (1) [PTHP] heating/cooling units; (2) receptacles and light fixtures; and (3) kitchen appliances consisting of a microwave, range, and refrigerator.” (*See* PSC REF # 480847 at 5.) Based on the information provided by the Applicant, tenants will control all electrical usage in the apartment.

IV. *The waiver standards under Wis. Admin. Code § PSC 113.01(2) are not satisfied.*

Section 113.01(2) contains a more general waiver standard, stating, “Nothing in this chapter of the Wisconsin Administrative Code shall preclude special and individual consideration being given to *exceptional or unusual situations . . .*” (Emphasis added.)

Unfortunately, there is nothing exceptional or unusual about the Applicant’s situation; rather, the Applicant made a mistake based on erroneous information received from a local unit of government. The Applicant stated:

We recently learned about Wis. Admin. Code PSC § 113.0803 from MG&E. Prior to that, neither we, our consultants, nor our contractors were aware of the separate metering requirements under the Commission’s administrative rules . . . .  
and

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[W]e and the permitting jurisdiction (City of Madison) were unaware of Wisconsin Administrative Code PSC 113.0803 when the project was permitted.

(See PSC REF #s 477129 and 480847.)

MGE strongly supports the addition of affordable workforce housing units in our community. However, ignorance of the law is not a defense. Regrettably, MGE was not consulted by the Applicant or City of Madison inspection staff about the individual-metering rules. MGE does not have the authority to ignore the rules, nor should those rules be waived in this case. The policy supporting individual meters for individual customers is a sound one – it strongly incents individual customers to engage in energy conservation and efficiency practices to help lower their energy costs – something a customer cannot do without their own meter.

Thank you for your consideration.

Very truly yours,

*/s/Bryan Kleinmaier*

S. Bryan Kleinmaier

SBK:lsh

cc: Scott R. Smith, Madison Gas and Electric Company (By Email)